

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

EDGAR MCDANIEL,

Plaintiff,

v.

No. 04-2667 B

AMERICAN GENERAL FINANCIAL
SERVICES INC., AMERICAN UNICORN,
INC. d/b/a HOME STORE COMPANY,
TRI-STATE TITLE & ESCROW and
HAYSE NELSON,

Defendants.

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATIONS

The Plaintiff, Edgar McDaniel, filed the instant action against the Defendants, American General Financial Services, Inc., American Unicorn, Inc. d/b/a Home Store Company, Tri-State Title & Escrow and Hayse Nelson, on August 27, 2004, arising from a mortgage loan transaction. On March 28, 2006, the Plaintiff filed a motion for default judgment against Defendants Nelson and American Unicorn, Inc. based on their failure to file an answer.¹ The Clerk entered default under Rule 55(a), Fed. R. Civ. P., against Nelson and American Unicorn, Inc. on March 3, 2006. On August 17, 2006, these Defendants filed a motion to set aside default judgment.² This Court referred both motions to United States Magistrate Judge Tu M. Pham. On February 6, 2007, Judge Pham

¹Because the Plaintiff had not previously registered a record of default against these Defendants, no default judgment could have been entered. See Fed. R. Civ. P. 55(b)(1).

²Actually, the Defendants' motion only seeks to set aside the default since no judgment had been entered against them.

issued his report, recommending that these Defendants' motion to set aside default be granted and McDaniel's motion for default judgment be denied. According to the Court's docket, no objections to the magistrate judge's report and recommendation have been filed pursuant to 28 U.S.C. § 636(b)(1)(C).

The Court has reviewed the magistrate judge's report and recommendation, and the entire record of the proceeding before the magistrate judge. No objections having been filed, the Court ADOPTS the magistrate judge's report and recommendation.

It is therefore ORDERED that the magistrate judge's report and recommendation filed February 6, 2007, be hereby ADOPTED. Therefore, the motion of the Defendants, Nelson and American Unicorn, Inc., to set aside default is GRANTED, and the motion of the Plaintiff for default judgment is DENIED.

IT IS SO ORDERED this 2nd day of March, 2007.

s/ J. DANIEL BREEN
UNITED STATES DISTRICT JUDGE